



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

STATE DOCUMENTS COLLECTION

April 30, 1993

JAN 4 1993

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA, MONTANA 59620

To: Interested Persons

Fr: Nancy Keenan *Nancy Keenan*
Superintendent of Public Instruction

Re: Proposed Amendments to Montana's State Plan Under Part B of
the Individuals With Disabilities Education Act For Fiscal
Years 93-95

Enclosed with this memo is a copy of Montana's proposed amendments to the State Plan under Part B of the Individuals With Disabilities Education Act for Fiscal Years 93-95. The proposed amendments result from new State Plan requirements that were added by the September 29, 1992, final Part B regulations.

The State Plan under Part B of the Individuals With Disabilities Education Act includes laws, rules and procedures for the provision of free appropriate public education to children with disabilities beginning at age three. The Plan also describes the use of federal funds for the support of special education and related services to eligible children.

Copies of the State Plan are available for review from the State Library System, Directors of Special Education, Special Education Cooperative Directors and the Office of Public Instruction.

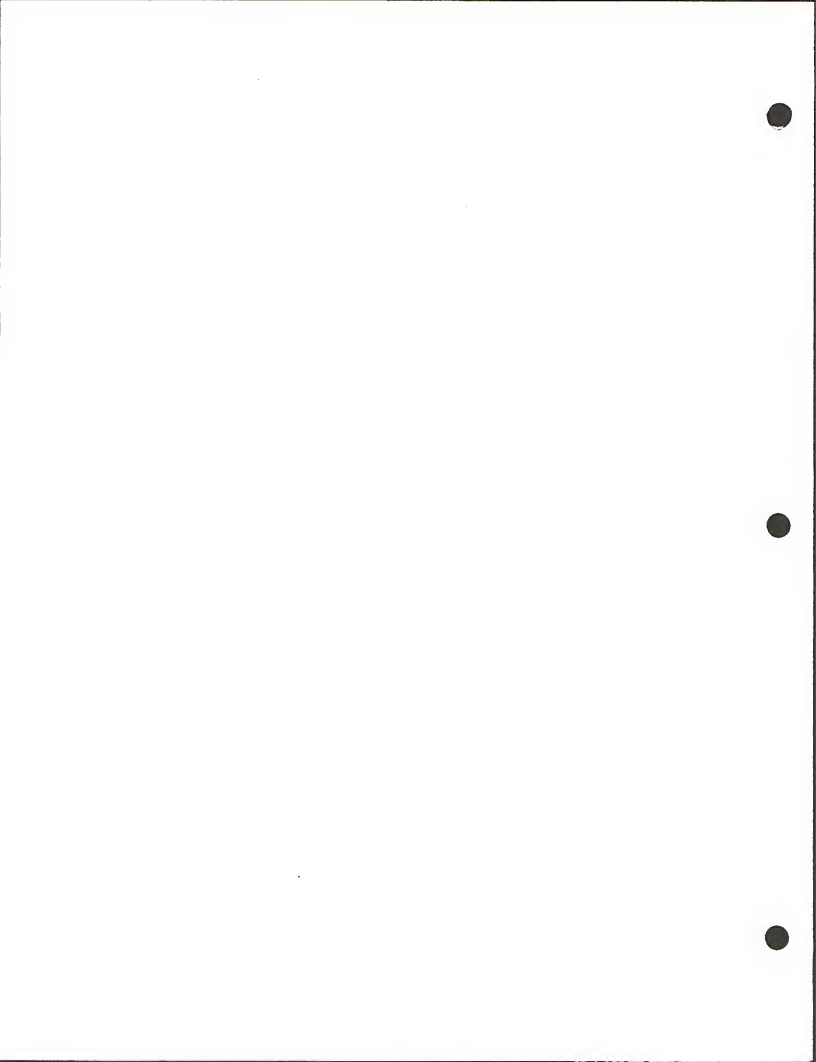
The amendments address:

- (1) New definitions
- (2) Transition Services
- (3) The Comprehensive System of Personnel Development
- (4) Transition of Children from the Part H to Part B program

Public Hearings on the enclosed amendments to the State Plan will be held on May 28 in the following locations:

Billings Parmly-Billings Library
510 North Broadway
Third Floor Meeting Room
Time: 9:00 a.m.

PLEASE RETURN



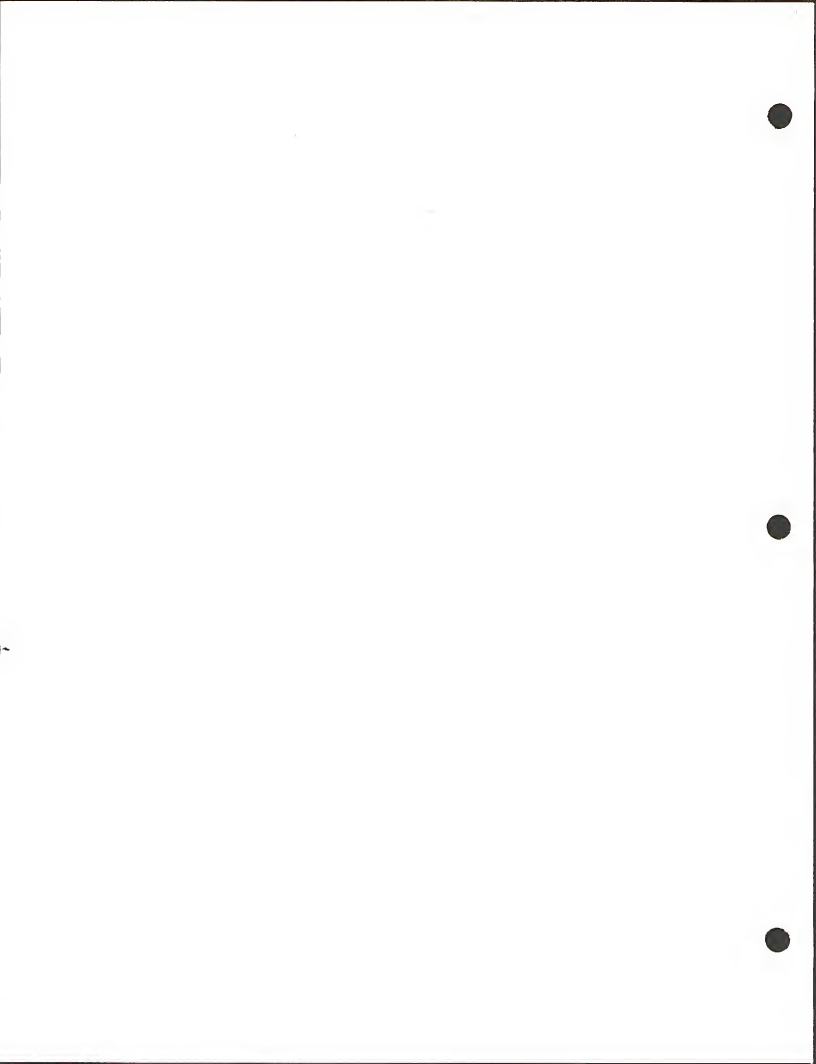
Interested Persons
April 30, 1993
Page 2

Kalispell Courthouse East
723 5th Avenue East
Conference Room #1
Time: 9:00 a.m.

Helena Lewis and Clark Library
120 South Last Chance Gulch
Large Conference Room
Time: 9:00 a.m.

Public comment is limited to the proposed amendments. Written comments should be directed to: Marilyn Pearson, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than June 18, 1993.

The Office of Public Instruction plans to submit the amendments to the U.S. Department of Education on July 5, 1993.



**PROPOSED AMENDMENTS TO MONTANA'S STATE PLAN UNDER PART B
OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
FOR FISCAL YEARS 93-95**

SECTION IV INDIVIDUALIZED EDUCATION PROGRAM

1. ADD THE FOLLOWING POLICY STATEMENTS ON PAGE 21 OF THE PLAN:

(12) **Transition Services:** Transition services means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

(a) **Transition Services Participants:** If a purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered and if an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(b) **Parent Notice/Participation:** If a purpose of the IEP meeting is the consideration of transition services for a student, the notice to the parents must also indicate this purpose, indicate that the agency will invite the student, and identify any other agency that will be invited to send a representative. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(c) **Content of IEP:** The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) and for any student who is 14 years old and is receiving special education and related services more than 50 percent of the school day, must include a statement of the needed transition services to be provided including instruction, community experiences, development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. If the IEP team determines that services are not needed in one or more of the areas specified in Sec. 300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(d) **Agency responsibilities for transition services:** If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(13) Transition of individuals from Part H to Part B:

The Office of Public Instruction and the Department of Social and Rehabilitation Services have established an interagency agreement which sets forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under Part H of IDEA who will participate in preschool programs assisted under Part B, including a method of ensuring that when a child turns age three an IEP has been developed and implemented by the child's third birthday.

(a) Local education agencies shall coordinate efforts with Child and Family Service Providers (CFSP) to ensure that IEPs are implemented on a child's third birthday for those children eligible for FAPE under Part B.

(b) If the child's third birthday falls during the summer months:

(i) The IEP developed for the child must specify the child's program upon the third birthday, including extended school year services if needed by the child in order to receive FAPE.

(ii) If the child does not need an extended school year in order to receive FAPE, the date of initiation of services would be the beginning of the school year following the third birthday.

SECTION X COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)

1. ADD THE FOLLOWING PARAGRAPH ON PAGE 78, FOLLOWING PARAGRAPH ONE (1).

Institutions of higher education (IHE) within the state that are preparing special education and related services personnel, including leadership personnel, by area of specialization, provide a data report to the CSPD Council and the Office of Public Instruction. The report includes (1) the numbers of students enrolled in programs for the preparation of special education and related services personnel administered by the IHE, and (2) the numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related service personnel which are administered by the IHE.

2. ADD THE FOLLOWING PARAGRAPH ON PAGE 84 AFTER 6, c.:

The Office of Public Instruction requires local education agencies to annually report data on (1) the number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline; (2) the number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate state certification, licensure or other credentials comparable to certification or licensure for that profession or discipline; and (3) the number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

The data on special education and related services personnel includes: audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides,

recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff. Leadership personnel includes administrators and supervisors of state or local agencies who are involved in the provision or supervision of services or activities to carry out special education and related services.

Data is collected by the SEA through child count (parts I and II), and as part of the annual application for federal funds under Part B and through other required data reports.

**REPLACE THE STATUTES (AS INDICATED BELOW)
WITH THE FOLLOWING REVISED STATUTES:**

1. REPLACE MCA 20-7-411 (PAGE 2 OF THE PLAN) WITH:

20-7-411. Regular Classes Preferred—Obligation to Establish Special Education Program

(1) All children with disabilities in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who do not have disabilities. Separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with disabilities between the ages of 6 and 18, inclusive.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as a part of the child's special education services, related services, or supplementary aids.

2. REPLACE MCA 20-7-401 (PAGE 3 OF THE PLAN) WITH:

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with disabilities" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities, and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disability; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

(17) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness.

3. REPLACE MCA 20-7-414 (PAGE 10 OF THE PLAN) WITH:

20-7-414. Determination of Children in Need and Type of Special Education Needed—Approval of Classes and Programs by Superintendent

(1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education.

4. REPLACE MCA 20-7-461 (PAGE 22 OF THE PLAN) WITH:

20-7-461. Appointment and Termination of Appointment of Surrogate Parent

(1) A school district or institution that provides education to a child with disabilities shall adopt procedures to assign an individual to act as a surrogate parent for a child with disabilities whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local education agency. The surrogate parent may not have a vested interest that will conflict with his representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the

appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment.

5. REPLACE MCA 20-7-403 (PAGE 48 OF THE PLAN) WITH:

20-7-403. Duties of Superintendent of Public Instruction

The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying children with disabilities;
- (5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;
- (6) seeking, for local districts, appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;
- (7) assisting local school districts, institutions, and other agencies in developing full service programs for all children with disabilities;
- (8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;
- (9) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outline their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parents, and the need to seek competent legal assistance in implementing hearing or appeal procedures;
- (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state;
- (13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

- (a) an in-state residential facility or children's psychiatric hospital; or
- (b) an out-of-state public school or private residential facility.

SECTION XVII INTERAGENCY AGREEMENTS

Add INTERAGENCY AGREEMENT ON TRANSITION FOR THE STATE OF MONTANA to the end of this section (before Appendix A).

I. RIGHT TO EDUCATION POLICY STATEMENT

A. Constitution of the State of Montana (Article X)

Section 1. Educational goals and duties.

(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

B. Montana Code Annotated, 1991

20-5-101. Admittance of Child to School

(1) The trustees shall assign and admit any child to a school in the district when the child is:

- (a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;
- (b) a resident of the district; and
- (c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of any district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

20-5-102. Compulsory Enrollment and Excuses

(1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;
- (c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (e), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

20-5-103. Compulsory Attendance and Excuses

(1) Except as provided in subsection (2), any parent, guardian or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

- (a) the child's 16 birthday;
- (b) the date of the completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

20-7-411. Regular Classes Preferred—Obligation to Establish Special Education Program

(1) All children with disabilities in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who do not have disabilities. Separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with disabilities between the ages of 6 and 18, inclusive.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as part of the child's special education services, related services, or supplementary aids.

20-7-402. Special Education to Comply with Board Policies

(1) The conduct of special education programs shall comply with the policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education. These policies shall assure and include but are not limited to:

(a) placement of children with disabilities in the least restrictive alternative setting;

(b) due process for all children with disabilities, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify children with disabilities and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each child with disabilities; and

- (e) other policies needed to assure a free and appropriate public education.
- (2) The Superintendent of Public Instruction shall promulgate rules to administer the policies of the Board of Public Education.

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with disabilities" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities, and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects

educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disability; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

(17) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal

procedures concerning the child.

(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness.

C. Administrative Rules of Montana

10.60.101. Board of Public Education Policy Statement

It shall be the policy of the Board of Public Education to foster the development and continuation of appropriate special education services for all children with disabilities with the opportunity to become confident, dignified and self-sufficient members of society to the greatest extent possible.

Note: The term "handicapped child" or "handicapped children" currently used in ARM has been changed to "child with disabilities" or "children with disabilities" to reflect proposed language change in the ARM.

10.55.805 Special Education (1) Each school shall comply with all federal and state laws and regulations addressing special education.

(2) Each school shall use the Montana Special Education Reference Manual as guidance for administering special education programs.

(3) Each school shall provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full-range of alternatives for addressing student needs.

(4) Each school shall be responsible for the following:

(a) Children with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society.

(b) To the maximum extent possible, and when appropriate, children with disabilities are educated with nondisabled in the district in which they live.

(c) A student shall receive special education only when documentation shows that the student cannot be appropriately educated in the regular program.

(d) A current individualized education program is prepared for each student receiving special education.

(5) Each school district with middle, junior high, 7th and 8th grade budgeted at high school rates or high school(s) shall require the development and use of processes to waive specific learner goals based on individual student needs, performance levels, age, maturity, and assessment of ability. Goals which are viewed as the result of this process must be identified on a student's transcript.

(6) A student who has successfully completed the goals identified on an individualized education program shall be awarded a diploma. (Eff. 7/1/89)

D. Policy Statement

The policy that all children with disabilities in Montana are entitled to a free appropriate education between the ages of 3 and 18, inclusive, as stated in 20-7-411, M.C.A., applies to all public agencies in the state that provide education to children with disabilities.

II. FULL EDUCATIONAL OPPORTUNITIES GOAL

A. Montana Code Annotated, 1991

20-7-411. Regular Classes Preferred—Obligation to Establish Special Education Program
(See Section 1, Part B, for complete citation.)

20-7-412. Establishment of Individual District Special Education Program

(1) The trustees of a district, upon obtaining the approval of the Superintendent of Public Instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the Superintendent of Public Instruction:

(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication or other individual programs.

(2) Programs may be established for persons with disabilities between the ages of 0 and 21 when the Superintendent of Public Instruction and the trustees have determined that the programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills that will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages that will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency that has responsibility for a person with disabilities over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide these services.

B. Description of Existing Programs

(1) All pupils ages 0-21. All school districts and special education cooperatives provide identification, location and evaluation services for children with disabilities ages 0-21.

(2) Zero through age 2 group. The Developmental Disabilities Division (DDD) of the Department of Social and Rehabilitation Services (SRS) is the lead agency for provision of early intervention services to infants and toddlers with disabilities. Services are provided in accord with the DDD's approved Part H program under IDEA. The Office of Public Instruction, school districts, special education cooperatives, state agencies and parent organizations work together to ensure early identification, location and referral of children in this age group. Services are provided by private service providers under contract with DDD in accord with the child's individualized family service plan (IFSP). The Family Support Services Advisory Council is the organizational structure used to ensure coordination among agencies and organizations for these services.

(3) Three through age 5 group. School districts are mandated to provide free, appropriate public education to children with disabilities, beginning at age three in accord with

school district staff, health care providers and other professionals are knowledgeable of the development of health care plans and the provision of services to meet the physical health care needs of the students in the school setting.

(k) Educational opportunities will be made available for school personnel providing services to children with autism.

(4) Fourteen through age 21 group.

(a) The state education agency will continue to encourage school districts to apply for Carl Perkins money to help assure that individuals have access to quality vocational education programs.

(b) Development of transition IEPs to effect a smooth transition between the schools and community services will be targeted as part of the technical assistance workshops provided on a regional basis.

(c) A concerted effort shared among various state agencies will continue to improve transitional programs for children with disabilities in Montana. The Office of Public Instruction and Department of Social and Rehabilitation Services have signed an interagency agreement to coordinate and develop services that will be designed to bring graduating youth with disabilities into full community participation in the areas of recreation and work.

- D. Policy Statement: It is the goal of the state education agency that all children with disabilities, birth through 21, receive full educational opportunities by the year 2000.

III. CHILD IDENTIFICATION

A. Montana Code Annotated, 1991

20-7-414. Determination of Children in Need and Type of Special Education Needed—Approval of Classes and Programs by Superintendent

(1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education.

20-7-404. Cooperation of State Agencies

The state department of health, the department of family services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

B. Administrative Rules of Montana

10.16.1201. Screening and Referral Process and Child Find

(1) Each school district must screen and develop criteria for further assessment for its students annually to determine potential candidates for special education.

(2) Each school district is responsible for developing a referral process for children and youth who have been, or are being, considered for retention, delayed admittance or considered as possible referral to a child study team.

(3) Each school is responsible for establishing a child find process.

10.16.901. Parental Notification of District Identification, Location Referral and Screening Procedures

(1) "Parent" includes a parent, a guardian, a surrogate parent or a person acting as

(8) For a child with a disability who has been evaluated for the first time, the public agency shall ensure that a member of the evaluation team participates in the meeting.

(9) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls,

(b) Copies of correspondence sent to the parents and any responses received, and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(10) Each public agency shall ensure that each child with disabilities' placement is determined at least annually.

(11) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

C. Monitoring Procedures

Monitoring procedures specifically address the requirements for individualized education programs (IEPs). The monitoring manual and forms clearly delineates the IEP components. A copy of the monitoring manual and forms is included in the appendix.

All LEAs are monitored for compliance with state and federal regulations on-site no less than once every five years. If deviations are identified, corrective actions are given with timelines for each. Corrective actions are monitored by the SEA to ensure compliance. A more extensive discussion of the monitoring process is found in Item IX, Part C.

V. PROCEDURAL SAFEGUARDS

A. Montana Code Annotated, 1991

20-7-402. Special Education to Comply with Board Policies

(1) The conduct of special education programs shall comply with the policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education. These policies shall assure and include but are not limited to:

(a) placement of children with disabilities in the least restrictive alternative setting;

(b) due process for all children with disabilities, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify children with disabilities and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each child with disabilities; and

(e) other policies needed to assure a free and appropriate public education.

(2) The Superintendent of Public Instruction shall promulgate rules to administer the policies of the Board of Public Education.

20-7-414. Determination of Children in Need and Type of Special Education Needed—Approval of Classes and Programs by Superintendent

(1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the trustees, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. Whenever the trustees of a school district or the governing authority of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education.

20-7-461. Appointment and Termination of Appointment of Surrogate Parent

(1) A school district or institution that provides education to a child with disabilities shall adopt procedures to assign an individual to act as a surrogate parent for a child with disabilities whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The

determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local education agency. The surrogate parent may not have a vested interest that will conflict with his representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment.

20-7-462. Responsibilities of Surrogate Parent

A person assigned as a surrogate parent shall represent the child with disabilities in all decision making processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

20-7-463. Surrogate Parent—Immunity from Liability—Reimbursement

(1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

B. Administrative Rules of Montana

10.60.102. Due Process in Services

Special education services shall include the provision of due process to ensure the rights of children with disabilities. The goal of due process is to prevent harm to children, parents and society. Due process shall include protections regarding the following:

- (a) identification of disabilities;
- (b) development of education program;
- (c) placement with the education program; and
- (d) annual review of education program and placement.

10.16.902. Parental Notification and Approval for Testing, Formal Evaluation and Interviewing

(1) If there is reason to believe that a preschool or school-age child is in need of special education services, written permission must be obtained by the local agency from the parents before the process of individual evaluation, interviewing or formal testing can begin. This shall also apply when a reevaluation is planned. The annual review of the individualized education program is exempt from the requirement for parental approval for evaluation.

(2) Written parental approval applies only to those procedures used selectively with an individual child (e.g., individual intelligence measures, audiometric evaluation, speech, voice, language evaluation, diagnostic skill testing) and not to basic tests administered to all children in school (e.g., yearly achievement measures, vision screening, hearing screening, speech screening).

(3) Prior to an evaluation or a reevaluation, the parent shall be provided with a written notice of intent to conduct an evaluation/reevaluation. The written notice must be written in language understandable to the general public and provided in the native language of the parents. Where the native language of the parents is not in written form, interpretation shall be provided orally in the native language. The written notice will be delivered to the parent during a personal conference or by certified mail. Oral interpretation shall always be made available in the native language of the home and in English. When necessary, arrangements shall be made to facilitate communication with hearing and visually impaired parents.

- (a) The notice of intent to conduct an evaluation must include:
 - (i) a full explanation of all of the procedural safeguards available to the parents under this chapter;
 - (ii) a description of the action proposed or refused by the agency, and explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
 - (iii) a description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal; and
 - (iv) a description of any other factors which are relevant to the agency's proposal or refusal.
- (b) The notice of intent to conduct an evaluation must be:
 - (i) written in language understandable to the general public; and
 - (ii) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

restrictive environment rules in 300.550-300.554.

E. Monitoring and Training Activities

The SEA shall monitor all educational programs for students with disabilities to ensure compliance with state and federal mandates. This includes the review of and assurance from private and public institutions to implement the requirements of serving children in the least restrictive environment.

Through the distribution of rules and regulations, the on-site monitoring reviews, inservice training activities and SEA technical assistance efforts, LEAs are informed of their responsibilities regarding the requirements of least restrictive environment.

To ensure LEA compliance with existing state and federal laws and regulations, the on-site monitoring team will conduct random in-depth reviews of individual CST/IEP reports and determine if, in fact, established criteria have been met. Determination of compliance will be made by the monitoring team based on record review and on-site observation of the child within the educational setting.

If there is evidence that a public agency makes placements that are inconsistent with 300.500, the state agency shall review the public agency's justification for its actions.

If established criteria have not been met, the monitoring team shall:

(1) notify the LEA or SOP in writing that placement in the least restrictive environment does not comply with state and federal regulations.

(2) Provide the LEA or SOP with written documentation of areas of noncompliance, required corrective actions, timelines for addressing corrective actions and suggest steps by which the LEA or SOP might comply with stated regulations. It is neither the intent nor the desire of the monitoring team to establish specific objectives, services or specific placement of the child, only to direct the LEA or SOP to comply with state and federal law.

Further assurance by LEAs of the establishment of least restrictive environment requirements is afforded in the Part B application. The SEA requires a "sign-off" by the LEA assuring that the least restrictive environment requirement is met. This "sign-off" must be noted before Part B dollars are released by the Office of Public Instruction to any LEA.

The Office of Public Instruction provides technical assistance for LEAs on the conduct of the CST/IEP, the provision of services in the least restrictive environment and placement procedures. The SEA also disseminates information on least restrictive environment requirements at an annual statewide monitoring review workshop, the state directors of special education workshop, due process hearing officers workshops and numerous Montana Laws and Rules for Special Education workshops. The SEA also presents annually at the statewide MEA, CEC and Early Childhood Conferences.

A copy of the technical assistance manual "Placement in the Least Restrictive Environment" is included in the appendices. This document has been disseminated statewide as a technical assistance document to administrators.

VIII. PROTECTION IN EVALUATION PROCEDURES

A. Montana Code Annotated, 1991

20-7-402. Special Education to Comply with Board Policies

(1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

- (a) placement of children with disabilities in the least restrictive alternative setting;
- (b) due process for all children with disabilities, including the appointment of a surrogate parent if necessary;
- (c) use of child study teams to identify children with disabilities and use of instructional teams to plan individual education programs;
- (d) comprehensive evaluation for each child with disabilities; and
- (e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

20-7-403. Duties of Superintendent of Public Instruction

The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying children with disabilities;
- (5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;
- (6) seeking, for local districts, appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;
- (7) assisting local school districts, institutions, and other agencies in developing full service programs for all children with disabilities;
- (8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;
- (9) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outline their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parents, and the need to seek competent legal assistance in implementing hearing or

appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

- (a) an in-state residential facility or children's psychiatric hospital; or
- (b) an out-of-state public school or private residential facility.

B. Administrative Rules of Montana

10.16.902. Parental Notification and Approval for Testing, Formal Evaluation and Interviewing

(1) If there is reason to believe that a preschool or school-age child is in need of special education services, written permission must be obtained by the local agency from the parents before the process of individual evaluation, interviewing or formal testing can begin. This shall also apply when a reevaluation is planned. The annual review of the individualized education program is exempt from the requirement for parental approval for evaluation.

(2) Written parental approval applies only to those procedures used selectively with an individual child (e.g., individual intelligence measure, audiometric evaluation, speech, voice, language evaluation, diagnostic skill testing) and not to basic tests administered to all children in school (e.g., yearly achievement measures, vision screening, hearing screening, speech screening).

(3) Prior to an evaluation or a reevaluation, the parent shall be provided with a written notice of intent to conduct an evaluation/reevaluation. The written notice must be written in language understandable to the general public and provided in the native language of the parents. Where the native language of the parents is not in written form, interpretation shall be provided orally in the native language. The written notice will be delivered to the parent during a personal conference or by certified mail. Oral interpretation shall always be made available in the native language of the home and in English. When necessary, arrangements shall be made to facilitate communication with hearing and visually impaired parents.

- (a) The notice of intent to conduct an evaluation must include:
 - (i) a full explanation of all of the procedural safeguards available to the parents under this chapter;
 - (ii) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
 - (iii) a description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal; and
 - (iv) a description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice of intent to conduct an evaluation must be:

- (i) written in language understandable to the general public; and
- (ii) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the local education agency shall take steps to ensure:

- (i) that the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication;
- (ii) that the parent understands the content of the notice; and
- (iii) that there is written evidence that the requirements in paragraph (3)(a) and (b) of this section have been met.

(4) Written parental consent to conduct the evaluation must be obtained prior to the evaluation process. In addition to written parental permission to evaluate/reevaluate, the local agency should obtain written parental acknowledgment of receipt and understanding of the notice of intent.

10.16.1101. Protection in Evaluation Procedures

(1) Each education agency shall establish procedures to assure that testing and evaluation materials and procedures used for evaluation and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory.

(2) The procedures that are developed by each education agency shall be established in accordance with the following criteria:

(a) evaluation and placement procedures are administered in accordance with the procedural safeguards in Rule 10.16.902; and

(b) the determination of a child's need for special education and related services is based on a comprehensive evaluation which may include, but is not limited to:

- (i) an individual psychological examination;
- (ii) relevant physical information;
- (iii) appropriate achievement testing and evaluation of classwork;
- (iv) direct observations in a variety of functioning environments;
- (v) assessment of the social skills and emotional status; and
- (vi) interviews with, or information provided by, important and involved persons in the child's life.

(c) tests and other materials and procedure used for evaluating a child's abilities have been properly and professionally evaluated for the specific purposes for which they are to be used and meet the test of reasonableness in the opinion of competent professional personnel.

(d) the evaluation materials and procedures are provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(e) steps are taken to assure that a test administered to a student with a sensory, motor, speech, hearing, visual or other communicative disability or to a student who is bilingual, accurately reflects the child's ability in the area tested and not the child's impaired communication skill or the fact that the child is not skilled in English.

(f) whenever individual intelligence tests are administered, steps are taken to assure that judgments about the child's placement are not based solely on an I.Q. score, that a behavioral description and an interpretation of the child's functioning on the various subtests are made by the qualified examiner who administered the test, and that the results of the evaluation are expressed in terms of the child's strengths, weaknesses and needs.

INTERAGENCY AGREEMENT ON TRANSITION
FOR THE STATE OF MONTANA

I. Parties

The parties to this agreement are the Developmental Disabilities Division (DDD) of the Department of Social and Rehabilitative Services (SRS) of the State of Montana and the Division of Special Education (DSE) of the Montana Office of Public Instruction (MOPI).

II. Preface

The importance of interagency collaboration and agreement has become an increasingly vital component in assuring the availability of comprehensive services and adequate service delivery systems for infants, toddlers, children, and youth with disabilities in Montana. Legislative mandates ensure that infants, toddlers, children and youth with disabilities are identified, located, evaluated, and, when appropriate, provided with services and transitioned smoothly throughout the early intervention, educational, social, rehabilitative, health, and human services systems.

The purpose of this agreement is to ensure implementation of a statewide comprehensive, coordinated, service delivery system between responsible state agencies to ensure access of infants, toddlers, children and youth with disabilities to the array of services available in Montana. These services may include health and medical screening, family support and training, early intervention and ancillary services, transition services, educational evaluation, special education and related services, pre-vocational and vocational training, supported work and living, and, when necessary, residential services (e.g. group homes, foster homes).

The interagency process establishes a working relationship among state agencies. Through a formal and definitive agreement, there is recognition and support for a comprehensive service delivery system for Montana's infants, toddlers, children and youth. This agreement minimizes independent and fragmented service delivery systems within each agency and provides a forum for resolving common problems.

The Department of Social and Rehabilitation Services and the Office of Public Instruction intend to collaborate on a comprehensive, statewide delivery system for direct services to infants, toddlers, children and youth with disabilities, ranging from birth through 18, encompassing a broad spectrum of services from child find activities to early intervention with infants and toddlers to special education services.

SRS and OPI shall work cooperatively to ensure the availability of appropriate early intervention services to eligible infants and toddlers, from birth through 2, by providing technical assistance to early intervention providers and local education agencies which will 1) identify best practices for serving the birth through 2 population, and 2) assist in the development of a smooth transition process from services for infants and toddlers as required by the Individuals with Disabilities Education Act (IDEA), Part H, to special education services, Part B.

III. Definitions

For the purposes of this agreement, both parties have adopted and will operate under the definitions prescribed by the Federal regulations applicable to each of their respective programs. Thus, DDD has adopted the definitions in the Federal Part H regulations for use in implementing the State's early intervention and family support program. DSE has adopted the definitions in the Federal Part B regulations for use in implementing the State's special education program.

Transition means a coordinated set of activities, designed within an outcome-oriented process, which promotes smooth movement from the Part H early intervention program into the Part B special education program. Transition includes:

activities which prepare the child and family for transition;
a meeting to describe the steps and outcome of transition;
referral to special education at the local education agency level, should the family elect to do so; and
exit from the Part H service delivery system.

IV. Shared Goals and Objectives

Both the DDD and the DSE recognize the need:

- (1) To share a single, interdependent procedure linking Part H to Part B programs;
- (2) To provide direction and guidance to agencies providing direct services to eligible children and families at the local level;
- (3) To prevent gaps in service delivery for eligible children whose third birthdays fall during the late spring or summer months;
- (4) To inform families of the necessity for and purpose of transition activities;

- (5) To identify desired outcomes of the transition process;
- (6) To delineate the skills and information required to facilitate a smooth transition between early intervention and special education environments;
- (7) To prepare individual children for transition, acquaint them with next environments, and collaborate to achieve anticipated outcomes;
- (8) To support the early interventionists and special educators as they fulfill their roles and responsibilities during the transition process; and
- (9) To provide mutual follow up support for all persons involved in the transition process.

V. Responsibilities of Each Party to the Interagency Agreement

A. The Developmental Disabilities Division, with the assistance of Montana's Child and Family Service Provider (CFSP) agencies, shall:

1. Ensure that all eligible infants and toddlers with disabilities receive appropriate early intervention and family support services under the regulations prescribed by Part H of the IDEA.
2. Ensure that CFSP agencies implement procedures which facilitate a smooth transition for eligible children with disabilities from Part H to Part B of IDEA.
3. Ensure CFSP agencies coordinate child find procedures with the LEA in such a way as to ensure that all children with disabilities are identified.
4. Ensure that each family's IFSP documents steps to be taken to support the transition of the child to preschool services provided under Part B to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;
5. Prepare the transitioning family by providing information to them regarding the structure of, and the similarities and differences between Part H and Part B services;
6. Equip families with knowledge regarding future placements, placement options, and other matters related to their child's transition;

7. Prepare the child for changes in service delivery, including facilitating steps to help the child adjust to, and function in, a new setting;
8. Assist families to identify desirable transition outcomes inclusive of the child's and family's priorities, concerns, and needs;
9. At the family's request, make referral of the child in transition to the local education agency;
10. Assist families to establish effective working relationships with local education agencies;
11. Establish a transition planning team for each transitioning family to include the parent(s), the Family Support Specialist, a local special education agency representative and/or administrator, and other parties as deemed necessary by the above core team members;
12. At the family's request, and upon receipt of their written authorization, provide for transmittal of child information to the local education agency inclusive of any information pertinent to the child's unique characteristics and/or the imminent transition. Provide copies of all transmitted documents to the family;
13. At the family's request, convene a transition planning meeting to develop a transition plan at least 90 days before the child turns three;
14. Ensure that in the event an eligible child become three years of age after April 30 (during the months of May, June, July, or August), when services are not generally available through Montana's local education agencies, Part H IFSP services will continue until Part B services begin, consistent with the local education agency's school year calendar.
15. Assist families in preparation for their initial Individual Education Plan meeting with local education agency. Attend that meeting with parents at their request;
16. Maintain communication with the family and local education agency personnel to provide transition assistance when needed; and
17. Ensure coordinated service delivery patterns for children three years of age or older in cases where the DDD elects to provide discretionary services

(e.g., Specialized Family Care) exclusive of Part H services, beyond the transition period.

18. Ensure that, by March 31st of each calendar year, CFSP agencies notify LEAs/IEUs of the number of Part H children who will turn three years of age and be potentially eligible for Part B services in the coming calendar year.

B. The Division of Special Education shall:

1. Ensure that all preschool-age children with disabilities receive free, appropriate public education under the regulations prescribed by Part B of IDEA;
2. Assist LEAs to develop procedures which inform parents regarding identification, evaluation, and placement as prescribed under Part B;
3. Ensure that each LEA develops child find procedures coordinated with the CFSP agencies including mechanisms to enable parents to refer for evaluation any three-, four-, or five-year-old child suspected of being a child with a disability;
4. Assist LEAs and CFSP agencies to develop procedures which enable the exchange of evaluation and assessment information within the framework of appropriate state and federal regulation;
5. Ensure that LEAs participate in the transition planning meeting at a mutually agreed upon time and place, given appropriate notice.
6. Ensure that LEAs develop procedures through which children whose third birthdays fall outside the school year receive free, appropriate public education at the beginning of the following school year, or during the summer months if the IEP confirms the need for an extended school year. State
P. 5-1
7. Encourage LEAs and CFSP agencies to develop ongoing mutually supportive relationships.
8. Ensure that LEAs consider the results of evaluations conducted under Part H with respect to the provision of free, appropriate public education.

9. Ensure the availability of comprehensive evaluation, at no cost to the parent, as necessary to determine whether the child is eligible for special education.
10. Encourage LEAs to collaborate with CFSP to prepare the child for transition and to acquaint them with the next environment.

VI. Fiscal Responsibility

In the Montana State Application Under Part H for Federal Fiscal Year 1992 Funds, the DDD indicated that its policies and procedures are in accord with the Part H regulations, while the DSE provided similar assurances in its state plan for special education, Fiscal Years 1993-1995 Montana State Plan Under Part B of the IDEA. Both plans provide assurances that local agencies (CFSPs and LEAs) provide either early intervention services or special education and related services in concert with Federal regulations.

The DDD is responsible for:

Ensuring the availability of comprehensive evaluation for eligibility determination and assessment related to program planning purposes for infants and toddlers with disabilities;

Ensuring eligible infants and toddlers and their families receive appropriate early intervention services, including transition services, until the child's third birthday; and

Ensuring the provision of services delineated in IFSPs for eligible children and families during the interim between the child's third birthdate and the initiation of special education services consistent with local education agencies' school year calendars.

The DSE is responsible for:

Ensuring the availability, at no cost to the parent, of comprehensive evaluation as necessary to determine whether the child is eligible for special education;

Ensuring that children with disabilities three years old and older receive free appropriate public education; and

Ensuring the provision of special education and related services consistent with an IEP for students whose IEPs indicate the need for an extended school year.

Shared responsibilities:

In cases where an eligible child transitions from early intervention into special education and has a concurrent IFSP and IEP, the LEA is responsible for costs of special education and

related services identified in the IEP, and the CFSP agency is responsible for the costs of early intervention services identified on the IFSP, exclusive of those identified on the IEP; and

Costs associated with staff time related to meetings for the purpose of planning, implementing, or following up on transition shall be an in-kind contribution of each agency.

VII. Role of Family

Both agencies acknowledge the:

Importance of the family as contributing members of their child's transition team;

The need to inform the family fully and accurately regarding all projected transition events and outcomes;

Right of the family to choose their own level of involvement in their child's transition including recognition of the family as the primary decision maker during the transition process;

Responsibility of the family to contribute to the development of the child's IFSP and IEP.

Right of the family to be informed of their rights in both early intervention and special education.

VIII. Confidentiality Assurances

All information concerning children and families shall be maintained in a confidential manner.

The CFSP agencies shall follow the procedures for maintaining confidentiality identified in Component 10 of the Montana State Application Under Part H for Federal Fiscal Year 1992 Funds (CFR 303.460).

The LEAs shall follow procedures for maintaining confidentiality identified in the Special Education Reference Manual: Montana Laws and Rules (Family Education Rights and Privacy Act).

IX. Joint Monitoring

DDD is the responsible State agency for the general administration and supervision of early intervention programs and activities receiving assistance under the Part H Infant and Toddler program. DDD is responsible for the monitoring of programs and activities used to carry out this Part, whether or not those programs or activities are receiving assistance under this Part, to ensure that the State complies with this Part. DDD will jointly monitor these programs and activities with DSE. Results of monitoring and compliance matters regarding Part H will be issued by joint report

of both agencies. Monitoring of corrective actions for early intervention will be conducted by DDD in cooperation with DSE.

X. Procedures for Resolution of Disputes

Dispute resolution at the local level is encouraged.

Disputes over the provision of free appropriate public education, e.g., the content of the IEP, will be resolved through procedures delineated for Special Education Due Process described in the Special Education Reference Manual: Montana Laws and Rules.

Disputes over the provision of Part H services, e.g., the content of the IFSP, will be resolved through the Impartial Procedures for Resolving Individual Child Complaints Regarding Part H Services described in the Montana State Application Under Part H for Federal Fiscal Year 1992 Funds.

Disputes about financial responsibility which reach the State Agency level will be resolved through informal negotiation between the DSE and DDD. Final resolution of a non-negotiable controversy between MOPI and SRS will be addressed through the procedures of the Montana Uniform Arbitration Act, Codified as Title 27, Chapter 5, Montana Codes Annotated.

Disputes which focus on payment for evaluations or services must be reduced to writing, and will present the nature of the controversy, the facts of the case, and propose a settlement based on regulations.

The CFSP agency shall submit written descriptions of the controversy to the Administrator of the DDD at SRS.

The LEA shall submit written descriptions of the controversy to the Director of Special Education at MOPI.

The personnel from both State Agencies will attempt to resolve the controversy informally.

Either agency may pursue final binding resolution through the Montana Uniform Arbitration Act.

XI. Terms of the Agreement

This interagency coordination agreement will become effective when signatures of properly authorized agents of both parties are affixed on each of two copies, each of which is considered as original.

- A. Effective dates of the agreement: This agreement shall remain in effect until December 31, 1995.

- B. Review of the agreement : No later than thirty-four months after the effective date of this agreement, the parties shall meet again to review, modify, and renew this agreement.
- C. Amendments to the agreement: The agreement may be amended by mutual agreement of each party, and by the affixing of the text of the amendment and the signatures of the administrative heads of each agency.
- D. Termination of the agreement: The agreement may be terminated by written notice of either party; such notice shall be given at least thirty (30) days prior to the effective date of termination.

Signatures:

Julia E. Robinson
Julia Robinson, Director
Department of Social and Rehabilitative Services

Date Nov 11, 1992

Nancy Keenan
Nancy Keenan, Superintendent
Office of Public Instruction

Date Nov 11, 1992